

Federal Personnel Manual System

FPM Letter 351-26

SUBJECT: New RIF Notice Requirements

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Heads of Departments and Independent Establishments:

1. On September 6, 1991, OPM published final reduction in force regulations in the Federal Register at 56 FR 43995 that require agencies to give all employees and their representatives at least 60 days specific written notice prior to a reduction in force action. Agencies may give their employees less notice only with the prior approval of OPM; however, OPM will not authorize a reduction in force notice period of less than 30 days. Previously, agencies were required to give employees at least 30 days total written notice of a reduction in force, including 10 days specific notice.

2. These new regulations also permit agencies to issue reduction in force notices to employees more than 90 days prior to a reduction in force action without the prior approval of OPM. Previously, agencies could not issue reduction in force notices to employees more than 90 days prior to a reduction in force without the prior approval of OPM.

3. In addition, these new regulations clarify that agencies must provide specific placement and unemployment insurance information to each employee who receives a reduction in force notice.

4. Finally, these new regulations provide that when 50 or more employees in a competitive area receive notices of separation by reduction in force, the agency must notify:

(1) The appropriate State dislocated worker unit, as designated under title III of the Job Training Partnership Act;

(2) The chief elected official of the local governmental jurisdiction(s) where the reduction in force separations will take place; and

(3) OPM.

5. This letter provides FPM instructions to implement these new reduction in force regulations. The revised FPM material will be formally included in the next revision of FPM Supplement 351-1. However, the new regulations and this FPM letter apply to any initial reduction in force notices issued on or after November 6, 1991.


Inquiries: Career Entry Group, Staffing Policy Division
(202) 606-0960; FTS 266-0960

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6. Attachment 1 to this letter revises Section S1-4e of the supplement.
7. Attachment 2 revises Section S2-11 of the supplement.
8. Attachment 3 completely revises Subchapter S7 of the supplement.


Constance Berry Newman
Director

1. Section SI-4e is revised to read as follows:

e. Special notices to Federal and nonfederal organizations when 50 or more employees receive notices of separation by reduction in force.

(1) Notices to Unemployment Insurance Service. The Department of Labor requires that agencies advise it when separating 50 or more employees in a commuting area by reduction in force. This information should be provided as far in advance as possible to:

Unemployment Insurance Service
Employment and Training Administration-TEUMI
United States Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

(2) Other organizations. When 50 or more employees in a competitive area receive notices of separation by reduction in force, the agency must also notify, at the same time it issues the separation notices to its employee:

(a) State dislocated worker unit. The appropriate State dislocated worker unit, as designated or created under title III of the Job Training Partnership Act;

(b) Local governmental official. The chief elected governmental official of local government(s) within which these separations will occur; and

(c) OPM. Agencies should send the OPM notice to the OPM area office with jurisdiction over the worksite.

1. Section 2-11 is revised to read as follows:

S2-1. DEFINITIONS

1. NOTICE means a written communication from an agency official to an individual employee stating that the employee will be reached for a reduction in force action. (See Section S7.)

1. Subchapter 7 is revised to read as follows:

Subchapter 7. RIF Notices.

S7-1. COVERAGE

This subchapter explains what information is contained in a reduction in force notice, and when the notice is issued to an employee.

S7-2. FORM OF NOTICE

a. Definition. (1) Specific notice. A specific reduction in force notice is a written communication from an agency official to an individual employee stating that the employee will be reached for a reduction in force action. This definition of "Notice" is also defined in S2-11. As used in this supplement, "reduction in force notice" means a specific reduction in force notice.

(2) Informational notices. An agency may also issue an advance informational notice to alert employees that a reduction in force may be necessary. However, an informational notice does not satisfy an employee's right to a specific reduction in force notice, nor does an informational notice count toward the mandatory notice period for a specific reduction in force notice.

b. Content of specific notice. A specific reduction in force notice must contain the following information:

(1) What reduction in force action is being taken (i.e., separation, demotion, furlough for more than 30 days, etc.);

(2) The reasons for the reduction in force;

(3) The effective date of the action;

(4) The employee's competitive area, competitive level, retention subgroup, service date, and annual performance ratings of record received during the last 3, or if applicable, 4 years;

(5) The place where the employee may inspect the regulations and records pertinent to his or her case;

(6) If applicable, the reasons for retaining a lowering standing employee under a mandatory exception, a discretionary continuing exception, or a discretionary temporary exception (see S4-4a(1)-(3));

(7) If applicable, explain that employees are being separated under the liquidation procedures without regard to retention standing within the subgroup, and the date the liquidation reduction in force will be completed (see S4-4a(4));

(8) As applicable, the employee's right to appeal the reduction in force action to the Merit Systems Protection Board under the provisions of the Board's regulations (see S8-1), or to grieve the action under a negotiated grievance procedure; and

(9) Information on the Reemployment Priority List and the Displaced Employee Program, if the employee receives a notice of separation because of reduction in force. (See Subchapter S9 of this supplement, and FPM Chapter 330, subchapters 2 and 3 for information on these placement programs.) Along with the reduction in force notice of separation, the agency must also give the employee information concerning how to apply for unemployment insurance through his or her appropriate State office. The agency may provide this information either in or with the reduction in force notice, or as a separate supplemental notice to the employee.

c. Additional agency notice requirements when employees are separated by reduction in force. Before separating any employees by reduction in force, an agency must notify OPM in order to register the employees in the Displaced Employee Program to assist them in finding other positions (see S1-4d). Also, when an agency separates 50 or more employees from a competitive area, the agency has additional notice requirements to OPM, and to other Federal and nonfederal organizations (see S1-4e).

S7-3. NOTICE PERIOD

a. Minimum 60-day period. An agency must give each competing employee at least 60 days specific written notice before the effective date of the reduction in force action. There is no maximum reduction in force notice period.

b. OPM approval required for shorter notice period.

(1) Minimum 30-day notice required with OPM approval. When a reduction in force is caused by unforeseeable circumstances, an agency may request OPM to authorize a notice period of less than 60 days, but at least 30 full days before the effective date of the reduction in force action.

(2) Agency's headquarters must request exception. An agency's request for an exception to the minimum 60-day specific notice period must be signed by the head of the agency or a specific designee in the headquarters.

(3) Content of agency's request. An agency's request to OPM for a shorter reduction in force notice period must cover:

(a) Identification of the organization and geographic location for which an exception is requested;

(b) The effective date of the reduction in force;

(c) The number of employees who will be issued reduction in force notices;

(d) The number of days that the agency requests the notice period be shortened;

(e) The reasons why a shorter reduction in force notice period is needed; and

(f) The name, telephone number, and title of an agency contact person in the event OPM requires additional information on the request.

(4) OPM address. Agencies must submit a request for a shorter reduction in force notice period to:

Office of Personnel Management
Associate Director, Personnel Systems and Oversight Group
ATTN: Agency Compliance and Evaluation
1900 E Street, NW
Washington, DC 20415

c. Same notice requirements when using individual exceptions to the order of release. An agency may find it necessary to make an exception to the regular reduction in force order of release as authorized in subsections S4-4a(1) (mandatory exception), (2) (discretionary continuing exception), and (3) (discretionary temporary exception). When an agency makes an individual exception to the regular reduction in force order of release under any of these three provisions, the retained employee is entitled to a specific written notice at least 60 days before the effective date of the reduction in force unless the agency has obtained OPM approval for a shorter notice period under paragraph b. above. The implementation date of a reduction in force action for an employee covered by one of these exceptions is the date on which the exception expires (see S3-10d). The agency may not continue the reduction in force notice period beyond the employee's retention period.

d. New notice required for more severe action. An employee is entitled to a new reduction in force notice and notice period of at least 60 days (or 30 days if the agency has obtained OPM approval for a shorter notice period under S7-2b) only if the agency takes a more severe reduction in force action than stated in the prior notice to the employee. (A change from a one-grade demotion to separation is an example of a more severe reduction in force action.) An agency may satisfy this additional notice period by use of a discretionary temporary exception to satisfy a Government obligation to an employee (see S4-4a(3)(c)). A new 60-day notice period is not required when an agency offers the same, or a less severe reduction in force action, than specified in the prior notice.

e. Notice to bargaining unit representative. At the same time the agency issues a reduction in force notice to an employee, the agency must also notify the exclusive representative(s), as defined in 5 U.S.C. 7103(a)(16), of each affected employee at the time of the notice. This notification requirement does not relieve the agency of any obligations under the Federal Labor Management Relations Statute, or an applicable collective bargaining agreement.

f. Length of notice. Each employee must have a full 60-day notice of a reduction in force, or a full 30-day notice if the agency has obtained OPM approval of a shorter notice period under S7-2b. The notice period begins the day after the employee receives the reduction in force notice. Neither the date the employee receives the notice, nor the effective date of the reduction in force action, may be counted in computing the notice period. An agency may not count a Saturday, Sunday, or legal holiday as the last day of the minimum notice period.

S7-4. AMENDED NOTICES

a. Different reduction in force date. (1) Later date. An agency must give an employee an amended reduction in force notice if the reduction in force is changed to a later date. A reduction in force action taken after the date specified in the original notice given to the employee is not invalid for that reason except when it is challenged by a higher-standing employee in the competitive level who is reached out of order for a reduction in force action as a result of the change in dates.

(2) Earlier date. An agency may not take a reduction in force action before the effective date in the original notice given to the employee.

(3) Employee decisions on a better offer of assignment. An agency must give an employee an amended reduction in force notice and allow the employee to decide whether to accept a better offer of assignment under Subchapter S5 to a position with a higher representative rate that becomes available before or on the effective date of the reduction in force. The agency must give the employee an amended notice regardless of whether the employee has accepted or rejected a previous offer. However, the employee is still entitled to only one offer of assignment and may be separated by reduction in force if the employee rejects the better offer, or fails to reply to the better offer within a reasonable time (see S5-3e).

S7-5. EXPIRATION OF NOTICE

a. Implementation of action. A reduction in force notice expires when it is followed by either:

(1) The reduction in force action specified in the notice; or

(2) A reduction in force action that is less severe than specified in the prior notice, or in an amendment to the notice, before the agency takes the action.

S7-6. STATUS DURING NOTICE PERIOD

a. Management right to place in nonduty status. When possible, the agency must retain the employee on active duty during the reduction in force notice period. When in an emergency the agency lacks work or funds for all or part of the notice period, it may, with or without the employee's consent, place the employee:

(1) On annual leave;

(2) In a leave without pay status; or

(3) In a nonpay status.

b. Furlough procedures required. The placement of an employee in a leave without pay or nonpay status as a result of a lack of work or funds may require the use of furlough procedures. (See Subchapter S6 for additional information on the use of furlough.)